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10/666,306	09/18/2003	Michael Smith	CIS0294US	7927
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CAMPBELL STEPHENSON LLP			ROBERTS, BRIAN S	
11401 CENTURY OAKS TERRACE				
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			07/11/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/666,306	SMITH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BRIAN ROBERTS	2619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 June 2008.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 and 14-37 is/are pending in the application.  
 4a) Of the above claim(s) 33-37 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-12 and 14-32 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 30 April 2008 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

- Claims 1-12 and 14-37 remain pending.
- Claims 33-37 have been withdrawn.

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/02/2008 has been entered.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 31-32 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 31-32 are directed to non-statutory subject matter because pg 26 paragraph 1 of the specification defines the computer readable medium to include "carrier wave traveling over an appropriate medium such as airwaves, optical lines, electrical lines, etc."

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14, 23-24, 26-28 and 30-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Shinomiya. (US 2003/0037165)

- In reference to claims 14, 30, 31

In Figure 14, Shinomiya teaches and system and method for forming a virtual switch (3) from a plurality of physical switches in a network, the method includes configuring a first physical switch as a master switch (3-1) for controlling the virtual switch (3); configuring a second physical switch as a slave switch (3-2) under the control of the master switch, wherein the first physical switch (3-1) and the second physical switch (3-2) are redundant backups acting as distribution switches in a network; forming a virtual switch link for communication between the master switch (3-1) and the slave switch (3-2) (as shown in Figure 1 paragraphs [0045-0046]); causing the master switch (3-1) and the slave switch (3-2) to communicate via a virtual router redundant protocol (*virtual switch link protocol*) and causing the master switch (3-1) and the slave switch (3-2) to act as a single virtual switch (3) to a switch hub (2) (*satellite switch*), wherein the virtual switch (3) is configured to receive instructions regarding

management of the network from the switch hub (2) (*satellite switch*) via the substitution server (6). (paragraphs [0182-0186])

- In reference to claims 23, 32

In Figure 1, Shinomiya further teaches extending a first data plane of the master switch (3-1) to include a second data plane of the slave switch (3-2) according to communication between the master switch and the slave switch via the virtual router redundant protocol (virtual switch link protocol). (paragraphs [0182-0186])

- In reference to claim 24

In Figure 1, Shinomiya further teaches forming the virtual switch link from a plurality of physical links acting as a single logical link. (paragraphs [0182-0186])

- In reference to claim 26

In Figures 9A-9C, Shinomiya further teaches updating layer 2 forwarding tables in the master chassis (3-1); updating layer 2 forwarding tables in the slave chassis (3-2); and correcting inconsistencies between the layer 2 forwarding tables in the master chassis (3-1) and the layer 2 forwarding tables in the slave chassis (3-2) via updating the forwarding tables in each chassis. (paragraphs [0090-0096]).

- In reference to claim 27

In Figure 2, Shinomiya further teaches forming the virtual switch link comprises combining the data virtual switch link and the control virtual switch link on a single physical link. (paragraphs [0047-0048])

- In reference to claim 28

In Figures 9A-9C, Shinomiya further teaches updating layer 2 forwarding tables in the master chassis (3-1); updating layer 2 forwarding tables in the slave chassis (3-2); and correcting inconsistencies between the layer 2 forwarding tables in the master chassis (3-1) and the layer 2 forwarding tables in the slave chassis (3-2) according to frames transmitted on the data virtual switch link. (paragraphs [0090-0096])

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-6, 8-11, 15-22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinomiya. (US 2003/0037165) in view of Walsh et al. (US 2002/0099972).

- In reference to claim 1

In Figure 14, Shinomiya teaches a virtual switch (3) for a network, the virtual switch (3) includes a master chassis (3-1) comprising a first master distribution switch port configured for communication with the slave chassis (3-2) over a virtual switch link (as shown in Figure 1 paragraphs [0045-0046]); a second master distribution switch port configured to receive management instructions from a switch hub (2) (*satellite switch*); and a third master distribution switch port configured to send configuration and management instructions to the network inherently containing core switches; and the slave chassis (3-2) comprising a first master distribution switch port configured for communication with the slave chassis over a virtual switch link (as shown in Figure 1 paragraphs [0045-0046]); a second master distribution switch port configured to receive management instructions from a switch hub (2) (*satellite switch*); and a third master distribution switch port configured to send configuration and management instructions to the network inherently containing core switches and a virtual switch link for communication between the master chassis (3-1) and the slave chassis (3-2). (paragraphs [0045-0046])

Shinomiya does not explicitly teach that the master chassis (3-1) comprises a first plurality of linecards; and a master supervisor card for controlling the first plurality of linecards and that the slave chassis (3-2) under the control of the master supervisor card comprises a second plurality of linecards; and a slave supervisor card.

In Figure 1, Walsh et al. teaches a router with a first plurality of linecards (108a); and a master supervisor card (102a) for controlling the first plurality of linecards and a

second plurality of linecards (108b); and a slave supervisor card (102b). (paragraph [0027])

It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the master chassis (3-1) of Shinomiya to include a first plurality of linecards; and a master supervisor card for controlling the first plurality of linecards as taught by Walsh et al. and modify the and slave chassis (3-2) of Shinomiya to include a second plurality of linecards; and a slave supervisor card as taught by Walsh et al. because it allows each chassis in the virtual switch to receive data over input communication links and forward data over output communication links as well as change from utilizing the master chassis to the slave chassis in case there was failure of the master chassis.

- In reference to claim 2

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 1, Shinomiya further teaches the master chassis (3-1) and the slave chassis (3-2) communicate according to a virtual router redundant protocol (virtual switch link protocol) for logically extending a data plane of the master chassis (3-1) to that of the slave chassis (3-2). (paragraphs [0045-0046])

- In reference to claim 4

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 2, Shinomiya further teaches the virtual switch link comprises a plurality of physical links combined to form a logical link. (paragraphs [0047-0048])

- In reference to claim 6

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figures 9A-9C, Shinomiya further teaches the virtual switch link is used to synchronize routing tables (32) of the master chassis (3-1) and the slave chassis (3-2). (paragraphs [0090-0096])

- In reference to claim 8

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 1, Shinomiya further teaches the data virtual switch link extends an internal chassis data plane to communication between the master chassis (3-1) and the slave chassis (3-2). (paragraphs [0045-0046])

- In reference to claim 9

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 1, Shinomiya further

teaches the master supervisor communicates with the slave supervisor via inband messaging on the control virtual switch link. (paragraphs [0045-0046])

- In reference to claim 10

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 7, Shinomiya further teaches the control virtual switch link is brought on-line first and is used to determine which chassis will be the master chassis (3-1). (paragraph [0076-0079])

- In reference to claim 11

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim. In Figure 2, Shinomiya further teaches a single physical link combines the control virtual switch link and the data virtual switch link. (paragraphs [0047-0048])

- In reference to claims 5, 15-18, 22, 29

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim.

While the combination of Shinomiya and Walsh et al. does not explicitly teach that the virtual switch link protocol comprises a field indicating whether a packet has traversed the virtual switch link, a source port identifier, a destination port index, and source

flood information, VLAN information, or data plane priority information, the admitted prior art teaches that the above fields are known in the art and are utilized to coordinate the transfer of packets between network elements and for configuration of the network elements.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of the combination of Shinomiya and Walsh et al. to include a field indicating whether a packet has traversed the virtual switch link, a source port identifier, a destination port index, source flood information, or VLAN information in a packet between Router A and Router B because it allows the coordination of load balancing between the respective routers and provides for the routing of packets by a backup router if a master router fails.

- In reference to claims 19-21

The combination of Shinomiya and Walsh et al. teaches a system and method that covers substantially all limitations of the parent claim.

While the combination of Shinomiya and Walsh et al. does not explicitly teach utilizing a virtual switch link protocol to determine whether an access control list should be applied to a frame, whether a QoS designation should be applied to a frame, or whether a frame is a MAC notification frame, the admitted prior art teaches the above fields are known in the art and are utilized to coordinate the transfer of packets between network elements and for configuration of the network elements.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system and method of the combination of Shinomiya and Walsh et al. to include utilizing a virtual switch link protocol to determine whether an access control list should be applied to a frame, whether a QoS designation should be applied to a frame, or whether a frame is a MAC notification frame, between Router A and Router B because it allows the coordination of load balancing between the respective routers and provides for the routing of packets by a backup router if a master router fails.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shinomiya (US 2003/0037165) in view of Goodrum et al. (US 5822512)

- In reference to claim 25

Shinomiya teaches a system and method that covers substantially all limitations of the parent claim.

Shinomiya does not explicitly teach that the virtual switch link comprises a control virtual switch link and a data virtual switch link.

Goodrum et al. teaches a method of out of band signaling where the control and data are transmitted on separate links between a backup and main server. (column 1 line 30-39)

It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the system and method of Shinomiya to include a separate data link and control link as suggested by Goodrum et al. because it provides a fault tolerant

system between the data and control data so that if a fault occurs on one of the links, the other link still may function and transmit/receive either the data or control data.

Claim 3, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinomiya (US 2003/0037165) in view of Walsh et al. (US 2002/0099972) and further in view of Goodrum et al. (US 5822512).

- In reference to claims 3, 7, 12

The combination of Shinomiya and Walsh et al. teaches a system and method that teaches substantially all limitations of the parent claims.

Shinomiya does not explicitly teach that the virtual switch link comprises a control virtual switch link and a data virtual switch link.

Goodrum et al. teaches a method of out of band signaling where the control and data are transmitted on separate links between a backup and main server. (column 1 line 30-39)

It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the system and method of the combination of Shinomiya and Walsh et al. to include a separate data link and control link as suggested by Goodrum et al. because it provides a fault tolerant system between the data and control data so that if a fault occurs on one of the links, the other link still may function and transmit/receive either the data or control data.

### ***Response to Arguments***

Applicant's arguments filed 06/02/2008 have been fully considered but they are not persuasive.

- On pg 9 of the Remarks, the Applicant contends that Shinomiya fails to teach a virtual switch receiving network management instructions from a satellite switch.
- The Examiner respectfully disagrees. Shinomiya teaches virtual switch (3) receiving management instructions from substitution server (6). The management instructions are forwarded from the substitution server (6) to the switch hub (2) (*satellite switch*). The switch hub (2) (*satellite switch*) then forwards the management instructions to the virtual switch (3). Hence while the management instructions do not originate from the switch hub (2) (*satellite switch*), the virtual switch does receive network management instructions from the switch hub (2) (*satellite switch*).

- On pg 10 of the Remarks, the Applicant contends that switch hub (2) is not a satellite switch giving the term its plain meaning.
- The Examiner respectfully disagrees. Switch hub (2) reads upon a satellite switch because the switch hub (2) is distant or remote to the virtual switch (3). The Examiner is uncertain as to what the Applicant regards as the "plain meaning" of the term.

- On pg 11 of the Remarks, the Applicant contends that Shinomiya does not teach a first master distribution port or a first slave distribution switch port.
- The Examiner respectfully disagrees. As shown in Figure 1 with the dotted line connecting the master chassis (3-1) to the slave chassis (3-2), Shinomiya teaches a first master distribution port of the master chassis configured for communication over a virtual switch link with the first slave distribution switch port slave of the chassis (3-2).
  
- On pg 11 of the Remarks, the Applicant contends that Shinomiya does not teach a second master distribution switch port configured to receive management instructions from a satellite switch.
- The Examiner respectfully disagrees. Shinomiya teaches a second master distribution switch port of the slave chassis (3-2) configured to receive management instructions from a switch hub (2) (*satellite switch*).
  
- On pg 11 of the Remarks, the Applicant contends that Shinomiya does not teach master router (3-1) and backup router (3-2) in a separate chassis.
- The Examiner respectfully disagrees. As shown in Figure 1, master router (3-1) and backup router (3-2) are in a separate chassis.\

- On pg 11 of the Remarks, the Applicant contends that there is no reason to combine the references in the manner of claim 1 and that Walsh teaches away from such a combination.
- The Examiner respectfully disagrees. The Examiner has provided a reason to combine. It allows each chassis in the virtual switch to receive data over input communication links and forward data over output communication links as well as change from utilizing the master chassis (3-1) to the slave chassis (3-2) in case there was failure of the master chassis.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIAN ROBERTS whose telephone number is (571)272-3095. The examiner can normally be reached on M-F 10:00-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on (571) 272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory B Sefcheck/  
Examiner, Art Unit 2619  
7-8-2008

BSR  
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